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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,123	03/21/2006	Keith Woelfel	02280.003470.1	5999
5514 7590 03/18/2010 FITZPATRICK CELLA HARPER & SCINTO 1290 Avenue of the Americas NEW YORK, NY 10104-3800				
EXAMINER				
PADEN, CAROLYN A				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
03/18/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,123

Applicant(s)

WOELFEL, KEITH

Examiner

Carolyn A. Paden

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 12-15, 17 and 19 is/are rejected.
- 7) ☒ Claim(s) 7, 9, 10, 18, 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

The amendment filed March 3, 2010 has been entered and the rejection of the claims over Capodieci has been withdrawn. Prosecution continues in order for applicant to respond to the following new grounds of rejection.

Claims 1-10, 12-15 and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Newly amended claims 1 and 12 contain new steps 1 and 2, which examiner understands to include both of these steps. Then step 3 is included to repeat that both of the steps are included in the process. An amendment to the claims cancelling step 3 or amending the process to include step 1 or 2 would overcome the rejection.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12-15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hemker (4,849,233).

Hemker discloses a coating and binder for popped corn kernels. In example 1, starting at column 13, lines 9-11, popcorn was prepared from corn kernels in the presence of coconut oil. The popping of the corn kernels is said to dehydrate the product (column 13, lines 13-17). This step is seen to be step 1 of the process. Then the popped corn is treated with butter and marshmallows (column 13, lines 28-31). This is seen to be steps a and b of the process. In this case marshmallows are the temperature sensitive inclusions (as set forth in paragraph 0012 of applicant's specification). Hemker refers to the mixture of marshmallows and margarine as the binder. In this case the marshmallows are seen to function as both binder and temperature sensitive inclusion. Then the popcorn mass is formed into balls in a balling device. The balling device is coated with a release agent that may include edible oil and lecithin. At column 16, lines 35-41 the popcorn balls are cooled and subsequently reheated to mold or shape the product. In this case the cooling of the popcorn balls is seen to dry the product because the popcorn becomes solid. The non-stick coating from the balling device is seen to coat the popcorn mass during formation in the balling device. The claims appear to differ from Hemker in the recitation of drying the final popcorn ball product

but one of ordinary skill in the art would expect the product to dry or be dried prior to packaging so that the consumer could easily handle the product. It is appreciated that the water activity of the cores is not mentioned but one of ordinary skill in the art would expect puffed popcorn in Hemker to have the water activity of the claims because the popcorn is dry. The marshmallows in Hemker are seen to be the candy coating, as require in claim 4. The marshmallows in Hemker are seen to contain the binder ingredients of the claims. Marshmallows are disclosed at column 13, lines 35-37 to contain ingredients necessary to from the binder of claim 5. It is appreciated that maltodextrin is not mentioned but maltodextrin is seen to be an obvious substitute for the corn syrup in Hemker.

Claims 7, 9, 10, 18 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

Application/Control Number: 10/532,123
Art Unit: 1794

Page 6